

Similarly, in addressing Section 273(d)(4)(D), which bars any entity engaged in establishing "industry-wide" standards/generic requirements or product certification from according preferential treatment to its own equipment or that of its affiliate, the NPRM asks whether the Commission should identify specific acts as per se violations, establish what constitutes a prima facie showing of violation, and provide for uniform fines/forfeitures for specific violations.¹⁰⁶ The NPRM goes on to find that "one form of preferential treatment we can identify at this time would be preferential licensing of technology," and seeks comment on "whether the Commission should require, as do the [ISO] and [ANSI], that participants agree to license proprietary technology on 'reasonable' terms before that technology is incorporated into an official standard."¹⁰⁷ In this area as well, it is not clear that establishment of detailed, comprehensive enforcement criteria is feasible. However, TIA urges the Commission to direct all non-accredited entities that are engaged in the development of "industry-wide" standards and generic requirements to require participants to adhere to the practices employed within TIA and other accredited standards bodies, which encourage early disclosure of relevant intellectual property claims and require holders of relevant intellectual property to agree to make their proprietary technology available on a non-discriminatory, royalty-free or other "reasonable" basis, in order for it to be incorporated into an official standard.

F. Termination of Requirements [Section 273(d)(6); NPRM ¶¶ 59-61]

¹⁰⁶ NPRM, Paragraph 57.

¹⁰⁷ Id.

In its NPRM, the Commission tentatively concludes that in making determinations under the "sunset" provisions of Section 273(d)(6), relevant factors include "the number of entities developing standards, developing generic requirements or conducting certification work; the ability of these entities to compete with each other; and the length of time during which those entities have been conducting the relevant activity."¹⁰⁸ In addition to these factors, TIA believes that consideration should be given to the nature of the entities developing alternative standards/generic requirements (e.g., whether they are accredited or non-accredited), as well the extent of their involvement in the relevant area.

TIA also believes it is appropriate to require entities seeking determinations that terminate their obligations under Section 273(d)(3)-(4) to bear the burden of producing procurement documents or other information to support their request for relief. In this regard, the Commission should require applicants to provide documentation demonstrating that alternative standards or generic requirements are actually in use on an "industry-wide" basis, as that term is defined in Section 273(d)(8). Moreover, applicants should be required to demonstrate that the "alternative sources" cited in their application are in fact providing true alternatives to the applicant's standard, generic requirement, or product certification service, i.e., that the "alternative" standard, generic requirement, or certification is being utilized in the marketplace in lieu of (rather than in addition to) the applicant's.

With regard to the application of Section 273(d) provisions to FCC Part 15 certification and Part 68 registration processes, the Commission tentatively concludes that "the

¹⁰⁸ NPRM, Paragraph 59.

regulations developed to implement Section 273(d)(3) and (4) should not apply to certification pursuant to Part 15. . . or registration pursuant to Part 68. . . ."109 In support of its conclusion, the Commission cites "the highly competitive nature of CPE in the United States" and the fact that "there are many commercially viable laboratories now in operation throughout the United States that test to Part 15 and Part 68 and that have done so for some time."¹¹⁰ TIA supports the FCC's tentative conclusion that the Commission's existing Parts 15/68 certification and registration regimes should not be disturbed. However, to the extent the FCC begins to reference voluntary industry standards in its rules, entities engaged in the development of such standards or the certification of products for compliance with such standards should be required to comply with the requirements of Section 273(d), to the extent such entities are otherwise subject to such requirements.

G. Administration and Enforcement [Section 273(d)(7); NPRM ¶ 62]

The NPRM tentatively concludes that the authority granted in Section 273(d)(7) and the definitions adopted in Section 273(d)(8) require no further clarification at this time.¹¹¹ TIA agrees with the Commission's tentative conclusion with respect to Section 273(d)(7). However, TIA believes that the term "certification," as defined in Section 273(d)(8), requires further clarification.¹¹²

¹⁰⁹ NPRM, Paragraph 61.

¹¹⁰ Id.

¹¹¹ Id., Paragraph 62.

¹¹² See discussion in Section V.A. above.

VI. BOC EQUIPMENT PROCUREMENT [Section 273(e); NPRM, ¶¶ 63-74]

A. Scope of Application [Section 273(e); NPRM ¶ 63]

TIA believes that the requirements of Section 273(e) should be deemed applicable to all BOCs. As the discussion of Section 273(c) above indicates, construing this provision as applying only to BOCs authorized to manufacture under Section 273(a) could encourage BOCs that are not so authorized to discriminate in favor of non-"affiliate" manufacturers in which they have a financial interest. In this regard, such a construction would be inconsistent with the language and intent of Section 273(e)(1)(B), which expressly bars BOC discrimination "in favor of equipment produced or supplied by an affiliate or related person."¹¹³ Moreover, Section 273(e)(2) by its terms explicitly requires "[e]ach Bell Operating Company" to base its procurement decisions "on the basis of an objective assessment of price, quality, and other commercial factors."¹¹⁴

B. Non-Discrimination Requirements [Section 273(e)(1); NPRM ¶¶ 64-67]

In requesting comment on the proper construction of the term "consider" for purposes of Section 273(e)(1)(A), which requires BOCs to "consider such equipment, produced or supplied by unrelated persons," the Commission notes that the "ordinary meaning" of the word "consider" is to "think seriously about" or "bear in mind."¹¹⁵ The NPRM goes on to assert that

¹¹³ 47 U.S.C. § 273(e)(1)(B).

¹¹⁴ 47 U.S.C. § 273(e)(2). TIA believes that the language in Section 273(e)(1) which requires a BOC to conform to the requirements "for the duration of the requirement for a separate subsidiary including manufacturing under this Act" is intended merely to establish the point at which such requirements terminate. In any event, this language does not apply to the requirements established in Section 273(e)(2).

¹¹⁵ NPRM, Paragraph 65.

"[t]his definition suggests that Section 273(e)(1)(A) would be satisfied if a BOC merely opened its procurement and sales processes to entities other than itself or its affiliate(s)," and invites comment on "whether this definition of 'consider' is sufficient or whether some other definition would be more consistent with the intent of Congress."¹¹⁶ In TIA's view, a BOC cannot be considered to have satisfied the requirements of Section 273(e)(1)(A) or the other provisions of Section 273(e) merely by announcing that its procurement process is open to entities other than itself or its affiliates. Rather, the "ordinary meaning" of the term "consider," as described by the Commission, suggests that a BOC must give "serious" thought to procuring products manufactured by "unrelated persons." Moreover, Section 273(e)(1)(A) must be construed in the context of the rest of Section 273(e), which includes language that explicitly requires the BOCs to affirmatively avoid discrimination and make their procurement decisions based on an "objective assessment" of the relative merits of products produced by "related" and "unrelated" persons.¹¹⁷

In addressing the non-discrimination requirements established in Section 273(e)(1)(B), the Commission itself notes that in contrast to Section 273(e)(1)(A), the language adopted in Section 273(e)(1)(B) "unequivocally prohibits BOCs from discriminating in favor of equipment produced or supplied by an affiliate or related person."¹¹⁸ The Commission goes on to

¹¹⁶ Id.

¹¹⁷ See 47 U.S.C. 273(e)(1)(B) and 273(e)(2).

¹¹⁸ NPRM, Paragraph 66. The NPRM further notes that the Commission has tentatively concluded that the "generic" prohibition on discrimination in procurement and standard-setting contained in Section 272(c)(1) requires "at minimum, that BOCs must treat all other entities in the same manner as they treat their affiliates, and must procure goods, services, facilities and information to and from these entities under the same terms, conditions, and rates." Id.

observe that the language used "seems to make it clear that the procurement decision may not rest solely on the BOC's relationship with the supplying entity and that, in addition to opening its procurement and sales processes, a BOC may need to take affirmative steps to ensure that it does not favor proposals from 'affiliates or related persons' for reasons other than merit."¹¹⁹

TIA agrees wholeheartedly with the Commission's observation that the language used in Section 273(e)(1)(B) imposes an "unequivocal" requirement of non-discrimination. Effective implementation of this provision clearly requires a BOC to take "affirmative steps" to ensure that its procurement decisions are based on the relative merits of the products manufactured by "related" and "unrelated" persons, rather than on "the BOC's relationship with the supplying entity." TIA also believes that the word "discriminate" should be construed in a manner consistent with that adopted by the FCC in construing Section 272(c)(1), while taking into account the differences in the language of these two sections. In its recent order in CC Docket No. 96-149, the Commission determined that Section 272(c)(1) establishes an "unqualified" prohibition against discrimination.¹²⁰ Similarly, Section 273(e)(1)(B) should be construed as barring any discrimination by a BOC in favor of an affiliate or "related party," in its procurement of "equipment, services, and software."¹²¹

¹¹⁹ Id.

¹²⁰ Non-Accounting Safeguards Order, supra n.11, at Paragraph 197.

¹²¹ Given the wide range of opportunities for discrimination in the procurement process, it is difficult to identify in any comprehensive way what specific actions would constitute discrimination.

With regard to the "affirmative steps" needed to ensure that a BOC does not discriminate, in its comments in CC Docket No. 96-149, TIA proposed that the BOCs should be required to establish specific procurement procedures designed to ensure compliance with the non-discrimination requirements of Section 272(c)(1), which would be submitted for Commission review and approval, following the receipt of comments from vendors and other interested parties. A requirement of this nature would allow the BOCs, in the first instance, the flexibility to develop their own compliance plans and procedures, and should not be unduly burdensome, since the BOCs were subject to a similar requirement to submit and maintain plans for satisfying the MFJ's non-discrimination requirements for more than a decade prior to enactment of the 1996 Act.¹²² In its recent order, the Commission deferred consideration of "detailed procurement procedures" and indicated that it would address this issue in the Section 272 rulemaking.¹²³ TIA again urges the Commission to adopt rules requiring the BOCs to establish and secure approval of procedures implementing the non-discrimination requirements of Section 272 and Section 273.

In its NPRM, the Commission observes that while Section 272(c)(1) bars discrimination in favor of BOC "affiliates," Section 273(e)(1)(B) prohibits discrimination in favor of "affiliates and related persons."¹²⁴ TIA agrees with the Commission's observation that Section 273(e)(1)(B) bars BOC discrimination in favor of "a larger class of entities" than is encompassed in Section 272(c)(1),¹²⁵ and believes that the term "related person" should be construed to include

¹²² See Section II.C., Modification of Final Judgment, supra n.5, 552 F.Supp. at 227.

¹²³ Non-Accounting Safeguards Order, supra n.11, Paragraph 234.

¹²⁴ NPRM, Paragraph 67.

¹²⁵ Id.

all BOC "affiliates," as well as any supplier in which a BOC has a material financial interest that gives it a direct and continuing share of the supplier's business or revenues. Specific types of arrangements which would make an entity a "related person" would include equity or equivalent interests, royalty agreements which provide for payments to the BOC based on sales of the supplier's products, and other material interests which give the BOC a direct, ongoing economic stake in the revenues from a particular manufacturer's business or products.¹²⁶

C. BOC Procurement Standards [Section 273(e)(2); NPRM ¶ 68]

In soliciting comments on the proper construction of Section 273(e)(2)'s requirement that "each [BOC] or any entity acting on its behalf shall make procurement decisions and award all supply contracts for equipment, services, and software on the basis of an objective assessment of price, quality, delivery, and other commercial factors," the NPRM requests comment on the scope of the terms "equipment," "services," and "software," as used in this provision.¹²⁷ In TIA's view, the term "equipment" as used in Section 273(c) clearly should be deemed to include, at a minimum, all products that fall within the statutory definition of "telecommunications equipment" or "CPE." However, there are a number of other types of equipment, that may or may not fall within these definitions, which a BOC purchases in connection with its provision of telecommunications services and other related business activities. As TIA indicated in its filings in CC Docket No. 96-149, BOC purchases of any type of product

¹²⁶ In contrast, the mere existence of a customer-supplier relationship between a particular supplier and a BOC would not in itself suffice to make the supplier a "related person" for purposes of Section 273(e).

¹²⁷ NPRM, Paragraph 68.

or service provide opportunities for cross-subsidization, self-dealing, and other anticompetitive practices of the sort which Section 273 is designed to prevent.¹²⁸ Since the literal terms of Section 273(e) do not specify particular types of equipment, the Commission should adopt an inclusive construction of this term, as it did in construing the terms "goods, services, facilities, and information," as used in Section 272(c)(1).¹²⁹ Similarly, the term "software" should be construed to include all types of software, not merely software that is "essential to" or "integral to" the design and development of telecommunications equipment or CPE.¹³⁰

D. Enforcement Mechanisms [NPRM ¶ 69]

In its NPRM, the Commission specifically acknowledges that "traditional, complaint-based enforcement techniques may be inadequate for the effective enforcement of Sections 273(e)(1) and (e)(2)," noting that "[e]ven when confronted with clear violations of the strictures of these sections, a manufacturer may be reluctant to complain publicly because, in doing so, it might risk alienating one or more customers that represent a significant source of potential future sales."¹³¹ Accordingly, the Commission requests comment on "the need for

¹²⁸ As TIA noted in its reply comments in CC Docket No. 96-150, consolidated BOC procurement of different types of equipment from affiliated or non-affiliated suppliers creates additional potential risks of cross-subsidization and discrimination, in the absence of rules which ensure an appropriate allocation of total procurement costs among the various categories of products being purchased. TIA Reply Comments, CC Docket No. 96-150 (September 10, 1996) at 23, n.59.

¹²⁹ See Non-Accounting Safeguards Order, *supra* n.11, Paragraph 216.

¹³⁰ With regard to the FCC's tentative conclusion that the rest of Section 273(e)(2) is "self-explanatory" (NPRM, Paragraph 68), TIA urges the Commission to clarify that the term "other commercial factors" does not encompass consideration of the fact that a particular supplier is an "affiliate" or "related person." See discussion in Section VI.B. above.

¹³¹ NPRM, Paragraph 69.

additional enforcement mechanisms, such as mandatory auditing or reporting requirements, for use in enforcing Sections 273(e)(1) and 273(e)(2)."¹³² For the reasons described in the Commission's notice, TIA is strongly of the view that reliance on traditional, complaint-based enforcement techniques is inadequate, and urges the Commission to establish additional enforcement mechanisms of the sort described in TIA's comments in CC Docket Nos. 96-149 and 96-150. These additional mechanisms would include 1) a requirement that the BOCs establish procurement standards and procedures to ensure compliance with relevant provisions of Sections 272 and 273, 2) reporting and record retention requirements, as described in TIA's earlier submissions,¹³³ and 3) ongoing Commission monitoring, both in the context of the biannual audits required pursuant to Section 272(d) and through spot examinations of BOC procurement records.¹³⁴

E. Protection of Proprietary Information [Section 273(e)(5); NPRM ¶74]

In its NPRM, the Commission tentatively concludes that the language of Section 273(e)(5), which requires each BOC and "any entity it owns or otherwise controls" to protect proprietary information submitted for procurement decisions from "release not specifically authorized by the owner of such information," is "unambiguous and self-executing," because it "corresponds to the customary use of common legal instruments such as non-disclosure agreements and license agreements."¹³⁵ In response to the Commission's request for comment on

¹³² NPRM, Paragraph 69.

¹³³ See TIA Initial Comments, CC Docket No. 96-149, at 47-49.

¹³⁴ Id. at 49.

¹³⁵ NPRM, Paragraph 74.

this tentative conclusion, TIA urges the Commission to require the BOCs, as part of the procurement compliance plans described above, to identify the steps that they will take to ensure the protection of proprietary information submitted in connection with their procurement and standards/certification activities, in compliance with the requirements of sections 273(e)(5), 273(d)(2) and 273(d)(3)(C)(ii).

VII. ADMINISTRATION AND ENFORCEMENT AUTHORITY [Section 273(f); NPRM ¶¶ 75-77]

The Commission's NPRM notes that Section 273(f) provides that "for the purposes of administering and enforcing the provisions of this section and the regulations prescribed thereunder," the Commission has "the same authority, power, and functions with respect to any BOC or any affiliate thereof as the Commission has in enforcing the provisions of [Title II] with respect to any common carrier subject to this Act."¹³⁶ The NPRM also tentatively concludes that the Commission has "broad authority to regulate all matters contemplated by Section 273 under Sections 1, 2(a), 3, and 4(i) of the Communications Act."¹³⁷ TIA agrees with the FCC's tentative conclusion with respect to its authority under Section 273(f) and other cited provisions of the Act to implement the BOC manufacturing safeguards established in Section 273. TIA also notes that to the extent the Commission identifies areas in which the potential for discrimination and cross-subsidization by a BOC in its dealings with its affiliates and other entities is not fully addressed in the safeguard provisions of sections 272 and 273, the Commission should

¹³⁶ NPRM, Paragraph 75.

¹³⁷ Id.

not hesitate to invoke its supplemental authority under Section 273(g) to "prescribe such additional rules and regulations as the Commission deems necessary" to prevent such behavior.

VIII. ADDITIONAL RULES AND REGULATIONS [Section 273(g); NPRM ¶ 78]

The NPRM requests comment on what, if any, additional rules should be adopted under Section 273(g) "to prevent discrimination and cross-subsidization in a [BOC's] dealings with its affiliate and with third parties."¹³⁸ In this regard, to the extent that any of the actions proposed by TIA to prevent BOC cross-subsidization or discrimination are or may be considered beyond the scope of the Commission's authority under Section 273(f) or other relevant sections of the Communications Act, Section 273(g) provides a further basis on which such actions may be taken.¹³⁹

¹³⁸ NPRM, Paragraph 78.

¹³⁹ See e.g., discussion in Section III.B. and IV.A.2., supra.

IX. CONCLUSION

TIA urges the Commission to take action to preserve the benefits of the vigorously competitive domestic equipment marketplace which exists today, by adopting appropriate rules implementing the provisions of Section 273, in a manner consistent with the foregoing comments.

Respectfully submitted,



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February 24, 1997

APPENDIX A

Text of Proposed Rules Implementing Section 273 of the Telecommunications Act of 1996

Part 53 of Title 47 of the Code of Federal Regulations is amended as follows.

1. Section 53.1 is amended as follows:

§ 53.1 Basis and purpose.

* * * * *

- (b) Purpose. The purpose of these rules is to implement Sections 271, 272, and 273 of the Communications Act as amended, 47 U.S.C. § 271-273.

2. Section 53.3 is amended by adding the following definitions in alphabetical order to read as follows:

§ 53.3 - Terms and Definitions.

* * * * *

Certification. For purposes of Section 273(d) and the regulations established thereunder, the term "certification" means any technical process whereby a party determines whether a product, for use by more than one local exchange carrier, conforms with the specified requirements (i.e., "standards," as defined herein, or "generic requirements," as defined in Section 273(d)(8)(B) of the Act) pertaining to such product. Interoperability testing and related activities undertaken by an individual manufacturer to ensure the effective interconnection and interoperation of its products with equipment manufactured by other entities do not constitute "certification," as defined herein.

Manufacturing. The term "manufacturing" has the same meaning as such term had under the AT&T Consent Decree. The term "manufacture" shall be construed in a manner consistent with this definition of "manufacturing."

Standard. The term "standard" means: (1) common and repeated use of rules, conditions, guidelines or characteristics for products or related processes and production methods; (2) the definition of terms; classification of components; delineation of procedures; specification of dimensions, materials, performance, designs, or operations; measurement of quality and quantity in describing materials, products, systems, services, or practices; or descriptions of fit and measurements of size; (3) a performance standard that states requirements in terms of required results with criteria for verifying compliance but without stating the methods for achieving required results; (4) a technical standard, including but not limited to size and strength

specifications; technical performance criteria for a product, modulation technique, process, or material; test methods; procurement guidelines; sampling procedures; business practices; management systems; definitional standards; and installation safety codes; (5) a "generic requirement," as defined in Section 273(d)(8) of the Act; or (6) a standardization document developed by a private sector association, organization or technical society, which plans, develops, establishes or coordinates standards, specifications, handbooks, or related documents. The term does not include professional standards of personal conduct, institutional codes of ethics, standardization documents developed by accredited standards development organizations, or standards issued by individual companies, other than generic requirements or other standards issued or adopted by or on behalf of a BOC.

[Note: The statutory definitions of "affiliate", "generic requirement," "industry-wide," or "accredited standards development organization" are acceptable to TIA.]

3. Subpart D of Part 53 is amended to read as follows:

Subpart D- Manufacturing by Bell Operating Companies

§ 53.301 Entry Conditions

a) Authorization Required. With the exception of previously authorized activities described in Section 271(f) of the Act, a BOC may not manufacture or provide telecommunications equipment, or manufacture customer premises equipment, unless and until the Commission authorizes that BOC or any BOC affiliate thereof to provide in-region interLATA service under Section 271(d), pursuant to a final order which is not subject to reconsideration by the Commission or judicial review.

b) Compliance with Safeguards. A BOC may not manufacture telecommunications equipment or customer premises equipment, except through a Section 272 affiliate and in compliance with the requirements of Sections 272 and 273 of the Act and the regulations prescribed thereunder.

§ 53.302 Collaboration, Research, and Royalty Agreements

a) Collaboration. A BOC may engage in close collaboration with manufacturers of telecommunications equipment or customer premises equipment during their design and development of hardware, software, or combinations thereof, on a non-discriminatory basis, consistent with the antitrust laws, the requirements of Sections 272 and 273 of the Act, and the regulations prescribed thereunder, to the extent necessary to ensure the effective interconnection and interoperation of products designed by such manufacturers for use in or connection to the BOC's network. Note: Consistent with the requirements of Section 272(a) of the Act, a BOC may not engage in design activities or other activities that constitute "manufacturing" except through a Section 272 affiliate.

b) Research, Royalty Agreements. A BOC may engage directly in basic and applied research activities in areas of technology that may have application to manufacturing, so long as such activities do not involve product-specific design and development or other activities that fall within the definition of "manufacturing." A BOC may enter into agreements with manufacturers of telecommunications equipment and CPE that provide for the licensing of intellectual property and related technical information arising from its generic research activities on a reasonable, non-discriminatory basis, subject to the requirements of Sections 272 and 273 of the Act and the regulations adopted pursuant thereto. Such agreements shall not provide for the collection or receipt of royalties or other similar compensation which is related to the BOC's own purchases of products from licensed manufacturers.

§ 53.303 Information Disclosure Requirements

a) Information on Protocols and Technical Requirements. Each BOC shall maintain and file with the Commission, in accordance with the requirements established in this section, full and complete information with respect to the protocols and technical requirements for connection with and use of its telephone exchange service facilities. Such information shall include, at a minimum, all protocols and other technical requirements for connection with and use of any and all points of interconnection within the BOC's network, as well as any and all BOC network elements, including information relating to 1) connections between BOC network elements, and 2) connections between customer premises equipment and BOC network elements. For purposes of this section, the term "points of interconnection" shall include, at a minimum, the interconnection points identified in § 51.305 of the Commission's rules, and the term "network elements" shall include, at a minimum, the elements defined in § 51.319 of the Commission's rules. Each BOC shall promptly report any material changes or planned changes to such protocols and requirements, and the schedule for implementation of such changes or planned changes.

b) Disclosure of Information.

1) A BOC shall not disclose any information required to be filed pursuant to § 53.303(a) until such information has been filed with the Commission, in accordance with the requirements established in this section.

2) If a BOC discloses information relating to the protocols and other technical requirements for connection with and use of its telephone exchange service facilities, or possible changes thereto, to any manufacturing affiliate or any unaffiliated manufacturer, other than information which has already been publicly disclosed in accordance with the requirements of this section, such information must be made immediately available to all manufacturers on a non-discriminatory basis, i.e., on equal terms and conditions. A BOC shall provide public notice of the availability of such information, by filing a report with the FCC in accordance with the requirements established in paragraphs (d)-(f) of this section, to the extent applicable.

c) Timing of Disclosure.

1) A BOC shall report planned changes at the make-buy point, as defined in subparagraph (c)(3) of this section, but at least 12 months before implementation, except as provided in subparagraph (c)(2) of this section.

2) If the changes can be implemented within twelve months of the make/buy point, public notice must be given at the make/buy point, but at least six months before implementation.

3) For purposes of this section, the "make/buy point" is the point at which a BOC decides to make for itself (to the extent the BOC is permitted to do so), or to procure from another entity, any product the design of which affects or relies on a new or changed network interface. If a BOC's planned changes do not require it to make or to procure a product, then the make/buy point is the point at which the BOC makes a definite decision to implement a network change.

A) For purposes of this section, a "product" is any hardware or software for use in a BOC's network or in conjunction with its facilities that, when installed, could affect the manufacture, interconnection, interoperability, or performance of equipment or software designed for use in or connection to a BOC's existing telephone network, facilities or services.

B) For purposes of this section a "definite decision" is reached when a BOC determines that the change is warranted, establishes a timetable for anticipated implementation and takes any action toward implementation of the change within its network.

4) The provisions of this paragraph shall not apply to disclosures required pursuant to subparagraph (b)(2) of this section.

d) Content of Disclosure.

1) BOC reports of planned network changes must, at a minimum, include:

A) the carrier's name and address;

B) the name and telephone number of a contact person who can supply additional information regarding the planned changes;

C) the implementation date of the planned changes;

D) the location(s) at which the changes will occur;

E) a description of the type of changes planned. (Information provided to satisfy this requirement must include, as applicable, but is not limited to, references to technical specifications, protocols, and standards regarding transmission, signaling, routing, and facility

assignment as well as references to technical standards that would be applicable to any new technologies or equipment, or that may otherwise affect interconnection); and

F) a description of the reasonably foreseeable impact of the planned changes.

2) In reporting planned network changes, the BOC also shall follow, as necessary, procedures relating to the treatment of confidential or proprietary information contained in paragraph (f) of this section.

e) Methods of Disclosure.

Commission filings under this section must be made as follows:

1) The report to the Commission must be labeled in the following manner: "Report of Network Change Under Rule 53.303.

2) Two paper copies of the report required under paragraph (a) of this section, must be sent to "Secretary, Federal Communications Commission, Washington, D.C. 20554." The date on which this filing is received by the Secretary is considered the official filing date.

3) In addition, one paper copy and one diskette copy must be sent to the "Chief, Network Services Division, Common Carrier Bureau, Federal Communications Commission, Washington, D.C. 20554." The diskette copy must be on a standard 3 1/2 inch diskette, formatted in IBM-compatible format to be readable by high-density floppy drives operating under MS DOS 5.X or later compatible versions, and shall be in a word-processing format designated, from time-to-time, in public notices released by the Network Services Division. The diskette must be submitted in "read only" mode, and must be clearly labeled with the BOC's name, the filing date, and an identification of the diskette's contents.

f) Treatment of Confidential or Proprietary Information.

1) If a reporting BOC claims that information otherwise required to be disclosed is confidential or proprietary, the BOC's report must include, in addition to the information identified in paragraph (d) of this section, a statement that the BOC will make further information available to those signing a nondisclosure agreement.

2) Upon receipt by a BOC of a request for disclosure of confidential or proprietary information, the applicable public notice period will be tolled until the parties agree on the terms of a nondisclosure agreement. A BOC receiving such a request must amend its report to the Commission as follows:

A) on the date it receives a request for disclosure of confidential or proprietary information, to state that the notice period is tolled; and

B) on the date the nondisclosure agreement is finalized, to specify a new implementation date.

§ 53.304 Bellcore; Standards and Certification

a) Bellcore Manufacturing. Bell Communications Research, Inc. ("Bellcore") and any successor entity or affiliate shall not engage in manufacturing telecommunications equipment or customer premises equipment as long as it is an affiliate, as defined in Section 273(b)(8) of the Act, of more than one otherwise unaffiliated BOC or successor or assign of any such company. Bellcore shall promptly advise the Commission of any development that leads it to conclude that it is no longer subject to the manufacturing restriction imposed under Section 273(d)(1)(B) of the Act and shall provide appropriate information and documentation supporting such a determination. Upon its receipt of such a report, the Commission shall initiate a proceeding to determine whether Bellcore is in fact no longer subject to the manufacturing restriction, and shall issue a public notice inviting interested parties to respond to Bellcore's submission. In such a proceeding, Bellcore shall bear the burden of demonstrating that it no longer falls within the scope of the restriction imposed in Section 273(d)(1)(B) of the Act. Upon a determination by the Commission that the restriction is no longer in effect, Bellcore may engage in the manufacture of telecommunications equipment or customer premises equipment, subject to the requirements of Section 273(d)(3) and the regulations established thereunder.

b) Protection of Proprietary Information.

1) Each BOC shall include in the Manufacturing Compliance Plan which it submits pursuant to § 53.305(a) a description of the steps to be taken to ensure conformance with the requirements of sections 273(d)(2), 273(d)(3)(C)(ii), and 273(e)(5).

2) Within 90 days of the date on which these regulations take effect, Bell Communications Research, Inc. ("Bellcore") or any successor thereto shall file with the Commission a description of the steps which it has taken and plans to take to ensure conformance with the requirements of Section 273(d)(2) and, to the extent applicable, Section 273(d)(3)(C)(ii) of the Act. A similar notice shall be filed prior to Bellcore's implementation of any subsequent changes to its compliance plans or procedures.

c) Industry-Wide Standards; Generic Requirements. All entities subject to the provisions of Section 273(d)(4)(A) shall conform to the requirements of said provisions, the Commission's orders implementing said provisions, and the regulations established herein. The requirements of Section 273(d)(4)(A) apply to any substantial modification of an existing industry-wide standard or industry-wide generic requirement for telecommunications equipment or customer premises equipment. A proposed modification will be deemed "substantial" if it would have a significant impact on network reliability, performance, security, interoperability, cost of manufacturing, product design, product testing, or manufacturing processes, or the technical or economic viability of products manufactured in conformance with the existing standard or generic requirement. A change to any of the principal components of a Bellcore generic requirement (i.e.,

product definition, requirements, objective, testing methods, or rationale) will be deemed to constitute a substantial modification.

d) Product Certification. An entity engaged in product certification for telecommunications equipment or customer premises equipment manufactured by unaffiliated entities shall conduct any such activity in accordance with published, auditable criteria, and available industry-accepted testing methods and standards, where applicable, including those set forth in ISO Guides 25, 43, and 58, unless otherwise agreed upon by the parties funding and performing such activity.

e) Sunset.

1) In considering whether to grant applications requesting termination of the requirements of Sections 273(d)(3) or (4), the Commission will determine whether there are alternative sources of industry-wide standards, industry-wide generic requirements, or product certification for particular classes of products described in _____. [TIA is currently attempting to develop specific language with respect to the classification scheme to be employed in implementing sections 273(d)(3) and (d)(6).] In determining whether alternative sources exist, the Commission will consider the number of entities developing industry-wide standards or industry-wide generic requirements or conducting certification for the particular class of products; the ability of other entities to compete with the applicant; the length of time during which other entities have been providing such services; whether the other entities are accredited or non-accredited organizations; the extent to which the other entities are engaged in the particular activity which is the subject of the application; the extent to which the standards, generic requirements, or product certification services of such other entities are in fact employed in the industry, in lieu of the applicant's standards, generic requirements, or product certification; and other relevant factors.

2) The applicant shall bear the burden of producing procurement documents or other information demonstrating the availability of other sources of industry-wide standards, industry-wide generic requirements, or product certification which constitute commercially viable alternatives that are actually in use and meet the requirements established in Section 273(d)(6) of the Act.

§ 53.305 Bell Operating Company Procurement

a) Compliance Plans. Within 90 days following the date on which these regulations take effect, each BOC shall submit to the Commission a Manufacturing Compliance Plan, identifying with specificity the steps it has taken and plans to take and the standards and procedures to be employed by the BOC in order to ensure compliance with the requirements of Sections 272(c)(1) and Section 273 of the Act, the Commission's orders implementing said provisions, and the rules established pursuant to said provisions. Upon receipt of the BOC's plan (or proposed changes thereto), the Commission shall initiate a proceeding to review the BOC's submission, and invite interested parties to submit responsive comments addressing the extent to which the BOC's plan (or changes thereto) effectively ensure compliance with the relevant statutory requirements and

Commission rules. The Commission shall review and approve, reject, or modify the BOC plans (or changes thereto) to the extent necessary to ensure that such plans are sufficient to ensure effective implementation of the relevant statutory requirements and Commission rules.

b) Reporting Requirements; Retention of Records. [TIA is currently in the process of developing specific rule language w/r/t nature and frequency of reports, the product classification scheme to be employed for reporting purposes, and the retention of documents relating to individual procurement decisions.]